

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Salsgiver Telecom, Inc.,)	
Complainant,)	File No. EB-06-MD-002
)	
v.)	
)	
North Pittsburgh Telephone Company,)	
Respondent.)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: May 23, 2007

Released: May 24, 2007

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we grant a pole attachment complaint¹ filed by Salsgiver Telecom, Inc. (“Salsgiver Telecom”) against North Pittsburgh Telephone Company (“NPTC”) pursuant to section 224 of the Communications Act of 1934, as amended (“the Act”)² and sections 1.1401-1.1418 of the Commission’s rules.³ The Complaint alleges that NPTC violated section 224 by denying Salsgiver Telecom access to NPTC’s poles, ducts, conduits, and rights-of-way for the placement of Salsgiver’s attachments.⁴ Salsgiver Telecom requests that the Commission order NPTC, *inter alia*, to provide Salsgiver Telecom with “immediate access to NPTC’s poles.”⁵ For the reasons stated below, we grant Salsgiver’s Complaint and order NPTC to provide Salsgiver immediately with nondiscriminatory access to NPTC’s poles.

¹ Complaint of Salsgiver Telecom, Inc., File No. EB-06-MD-002 (filed Feb. 7, 2006) (“Complaint”).

² 47 U.S.C. § 224.

³ 47 C.F.R. §§ 1.1401-1418.

⁴ *See, e.g.*, Complaint at 5-7, 9, ¶¶ 16, 19, 22-23, 31.

⁵ Complaint at 10, ¶ 34. For ease of reference, “poles” as used herein refers to all facilities and properties owned and/or controlled by NPTC that are the subject of Salsgiver Telecom’s request for access under section 224.

II. FACTUAL AND REGULATORY BACKGROUND

2. Salsgiver Telecom is authorized by Certificate of Public Convenience from the Pennsylvania Public Utility Commission (“PaPUC”) to “offer, render, furnish or supply telecommunication services as a Competitive Access Provider [“CAP”] to the Public in the Commonwealth of Pennsylvania.”⁶ Salsgiver Telecom has filed with the PaPUC a tariff under which it offers intrastate wholesale dedicated access service to the public as a CAP (“CAP Tariff” or “Tariff”).⁷ Salsgiver Telecom offers this service to nonresidential users over its own facilities, or in combination with the facilities of other companies, on a point-to-point basis for the transmission of one-way and two-way communications at DS-3 speed (44.736 Mbps), or on a case-by-case basis, at another speed. Salsgiver Telecom offers to lease its dedicated and private line communications infrastructure under the Tariff to enterprise customers for high-bandwidth, secure, voice, video, and data networks.⁸

3. NPTC is an incumbent local exchange carrier providing telecommunications within the Commonwealth of Pennsylvania, and thus is a “utility” within the meaning of section 224(a)(1) of the Act.⁹ As a “utility,” NPTC must provide “a cable television system or any telecommunications carrier” with “nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it,”¹⁰

⁶ Letter dated September 5, 2006 from J.D. Thomas, counsel to Salsgiver Telecom, to Barbara Esbin, Market Disputes Resolution Division, Enforcement Bureau (“Salsgiver Telecom Sept. 5, 2006 Letter”), File No. EB-06-MD-002, attaching as Exhibit 2: Letter dated March 27, 2006 from James J. McNulty, Secretary, Pennsylvania Public Utility Commission, File No. A-311373, Application of Salsgiver Telecom, Inc. to provide telecommunication services as a Competitive Access Provider to the Public in the Commonwealth of Pennsylvania (“March 27, 2006 Secretarial Letter”), and In the Matter of Application of Salsgiver Telecom, Inc. for approval to offer, render, furnish, or supply telecommunications services as a Competitive Access Provider, to the Public, in the Commonwealth of Pennsylvania, Certificate of Public Convenience, adopted Jan. 27, 2006 (“Certificate of Public Convenience”).

⁷ CAP Tariff, Pa. P.U.C. Tariff No. 1, Effective Feb. 14, 2006, attached as Exhibit 1 to Salsgiver Telecom Sept. 5, 2006 Letter, “Application of Tariff” and “Service Offered,” Page 4 of 28. See March 27, 2006 Secretarial Letter (permitting Salsgiver Telecom’s CAP Tariff to become effective on Feb. 14, 2006); Complaint at 3-4, ¶¶ 9-10. The PaPUC provisionally approved Salsgiver Telecom’s application to provide telecommunications services as a CAP in Pennsylvania on June 30, 2005. Complaint, Exhibit 1, Letter dated June 30, 2005 from James J. McNulty, Secretary, Pennsylvania Public Utility Commission, File No. A-311373, Application of Salsgiver Telecom, Inc. to provide telecommunication services as a Competitive Access Provider to the public in the Commonwealth of Pennsylvania (“June 30, 2005 Secretarial Letter”). Subsequently, on February 7, 2006, the PaPUC granted Salsgiver Telecom’s application to operate as a CAP subject to the conditions and limitations set forth in the order, including specified revisions to Salsgiver Telecom’s proposed CAP Tariff. Response to Complaint filed by NPTC, File No. EB-06-MD-002 (filed Mar. 10, 2006) (“Response”) at 4, ¶ 10, Exhibit 1, Application of Salsgiver Telecom, Inc. for approval to offer, render, furnish or supply telecommunication services as a Competitive Access Provider to the Public in the Commonwealth of Pennsylvania, Order, Docket No. A-311373, Feb. 7, 2006 (“Salsgiver CAP Authorization Order”) at 2-6.

⁸ CAP Tariff, “Application of Tariff” and “Service Offered” and Sections 2.1.1., 3.1, Pages 4, 8 and 25 of 28.

⁹ Complaint at 1-2, ¶ 3; Response at 2, ¶ 3. Section 224(a)(1) of the Act defines “utility,” in pertinent part, as “a local exchange carrier ... who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.” 47 U.S.C. § 224(a)(1).

¹⁰ 47 U.S.C. § 224(f)(1) (emphasis added). See 47 U.S.C. §§ 224(a)(4) (defining “pole attachment” as “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility”).

unless it can show that a denial of access is justified due to “insufficient capacity” or “for reasons of safety, reliability and generally applicable engineering purposes.”¹¹

4. On October 12, 2005, Salsgiver Telecom sent a letter to NPTC requesting access to NPTC’s poles.¹² The letter informed NPTC that Salsgiver Telecom had PaPUC approval to provide telecommunication services as a CAP to the public in Pennsylvania, and sought immediately to commence pole attachment agreement negotiations with NPTC.¹³ Following a telephone conversation between counsel, Salsgiver Telecom sent NPTC a letter on November 11, 2005 attaching a copy of a June 30, 2005 letter from the PaPUC provisionally approving Salsgiver Telecom’s application to provide telecommunications services as a CAP in Pennsylvania.¹⁴ In a November 23, 2005 response, NPTC declined Salsgiver Telecom’s request for access, asserting that under its Tariff, Salsgiver Telecom is “merely a lessor of a broadband transmission capacity” and therefore is not a “telecommunications carrier” entitled to access NPTC’s poles under the Act.¹⁵

5. On February 7, 2006, Salsgiver Telecom filed the instant Complaint alleging that, because Salsgiver Telecom is a “telecommunications carrier,” NPTC’s denial of access to its poles violates section 224 of the Act. The Complaint seeks an order requiring NPTC to grant Salsgiver Telecom immediate access to NPTC’s poles.¹⁶ In its Response to the Complaint, NPTC argues that Salsgiver Telecom is not entitled to such access under section 224, because Salsgiver Telecom has not demonstrated that it is a “telecommunications carrier” planning to provide “telecommunications services” over the requested attachments. NPTC also sought dismissal of the Complaint as untimely.¹⁷

¹¹ 47 U.S.C. § 224(f)(2).

¹² Complaint at 4, ¶ 11; Exhibit 4, Letter dated October 12, 2005 from Ralph F. Manning, counsel to Salsgiver Telecom, to Kevin J. Albaugh, Vice President-Regulatory Affairs (“Salsgiver Telecom Oct. 12, 2005 Letter”) at 1; Response at 4, ¶ 11.

¹³ Complaint at 4, ¶ 12; Salsgiver Telecom Oct. 12, 2005 Letter at 1; Complaint, Declaration of Loren Salsgiver, Chief Executive Officer of Salsgiver Telecom, at 2-3, ¶¶ 7-8; Response at 4, ¶ 12.

¹⁴ Complaint at 5, ¶ 13; Exhibit 7, Letter dated November 11, 2005 from Ralph F. Manning to John Alzamora, counsel to NPTC (“Salsgiver Telecom Nov. 11, 2005 Letter”) at 1, attaching June 30, 2005 Secretarial Letter; Response at 5, ¶ 13.

¹⁵ Complaint at 5, ¶ 14; Exhibit 8, Letter dated November 23, 2005 from John Alzamora to Ralph F. Manning (“NPTC Nov. 23, 2005 Letter”) at 2; Response at 6, ¶ 14.

¹⁶ Specifically, Salsgiver Telecom seeks an order, *inter alia*, requiring NPTC to: (i) commence immediate good-faith negotiations for a pole attachment agreement, with a directive to execute a new pole attachment agreement within 30 days of the date of the Order; (ii) accept and process pole attachment applications and conduct any necessary engineering or make-ready work according to reasonable deadlines; and (iii) grant access to NPTC’s poles without a formal agreement in the event that NPTC fails to timely complete a just and reasonable pole attachment agreement. Complaint at 10-11, ¶ 34. Salsgiver Telecom also requests that the Commission impose penalties and sanctions, and grant an award of damages pursuant to 47 U.S.C. §§ 206-209, 501, 503(a), (b) and 47 C.F.R. §§ 1.1413, 1.80. Complaint at 10-11, ¶ 34. We address these requests in Section III.D., *infra*.

¹⁷ See, e.g., Response at 6, 12 ¶¶ 14, 41, 43-44.

6. The key question presented here is whether Salsgiver Telecom is a “telecommunications carrier” with statutory access rights to NPTC’s poles under section 224(f)(1) of the Act.¹⁸ Answering that question requires examination of certain statutory and common law definitions described below.

7. The Act defines “telecommunications carrier,” in pertinent part, as “any provider of telecommunications services . . .,” and specifies that “[a] telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services.”¹⁹ The term “telecommunications service” is defined as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”²⁰ “Telecommunications” is defined as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”²¹

8. In interpreting those statutory definitions, the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) affirmed the Commission’s conclusions that (i) the term “telecommunications service” “is intended to encompass only telecommunications provided on a *common carrier* basis,”²² and (ii) the term “telecommunications carrier,” which was added to the Act in 1996, has essentially the same meaning as the pre-existing term “common carrier.”²³ Courts construing “common carrier” have held, *inter alia*, that “the primary *sine qua non* of common carrier status is a quasi-public character, which arises out of the undertaking to carry for all people indifferently;” and a “second prerequisite to common carrier status” is that “customers transmit intelligence of their own design and choosing.”²⁴ Such offering of service indiscriminately to the public may be either a wholesale offering to other carriers or a retail offering to end users.²⁵

¹⁸ Although section 224(f)(2) explicitly permits denial of access “where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes,” 47 U.S.C. § 224(f)(2), NPTC’s denial of access does not rest on any of these grounds, but rather solely on NPTC’s contention that Salsgiver is not a “telecommunications carrier” with a right of access under section 224(f)(1).

¹⁹ 47 U.S.C. § 153(44).

²⁰ 47 U.S.C. § 153(46).

²¹ 47 U.S.C. § 153(43).

²² *Virgin Islands Tel. Co. v. FCC*, 198 F.3d 921, 927-30 (D.C. Cir. 1999) (“*Vitelco*”) (emphasis added) (affirming *AT&T Submarine Sys., Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 21585 (1998)).

²³ *Vitelco*, 198 F.3d at 924-27. *See, e.g., Cable & Wireless plc*, Memorandum Opinion and Order, 12 FCC Rcd 8516, 8521-23 at ¶¶ 12-17 (1997); *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9177-78 at ¶ 785 (1997) (subsequent history omitted) (“*Universal Service Order*”). The Act defines “common carrier” or “carrier” as “any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio” 47 U.S.C. § 153(10).

²⁴ *Southwestern Bell Telephone Co. v. Federal Communications Commission*, 19 F.3d 1475, 1480 (D.C. Cir. 1994) (quoting *National Ass’n of Regulatory Util. Comm’rs v. FCC*, 533 F.2d 601, 608-09 (D.C. Cir. 1976) (internal quotes and footnotes omitted)). *See, e.g., U.S. Telecom Ass’n v. FCC*, 295 F.3d 1326, 1329 (D.C. Cir. 2002); *National Ass’n of Regulatory Util. Comm’rs v. FCC*, 525 F.2d 630 (D.C. Cir.), *cert. denied*, 425 U.S. 992 (1976).

²⁵ *See, e.g., Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11,501, 11,556 at ¶ 115 (1998) (“*Universal Service Report to Congress*”); *Universal Service Order*, 12 FCC Rcd at 9177-78, ¶ 785 (holding that “[c]ommon carrier services include services offered to other carriers, such as exchange access service, which is offered on a common carrier basis, but is offered primarily to other carriers”). *See generally MTS and*

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III. DISCUSSION

A. Salsgiver Telecom Has Established a *Prima Facie* Case That It Is a “Telecommunications Carrier” with a Right of Access to NPTC’s Poles Under Section 224(f)(1) of the Act

9. In a case such as this challenging a denial of access, section 1.1409(b) of our rules provides that the complainant bears the burden of establishing a *prima facie* case that the denial of access violates section 224(f) of the Act.²⁶ Once the complainant establishes a *prima facie* case, the defendant utility has the burden of proving that its denial was lawful.²⁷ Therefore, Salsgiver Telecom bears an initial burden to establish a *prima facie* case that it is a “telecommunications carrier” with a right of access within the meaning of the Act. As discussed below, we conclude that Salsgiver Telecom has met that burden by showing that it possesses a valid state authorization to provide telecommunications services, and has filed a state tariff offering such services to the public.

10. Salsgiver Telecom has offered proof of its status as a “telecommunications carrier” in NPTC’s territory by submitting in the record (i) its Certificate of Public Convenience to provide telecommunications services as a CAP to the public within the Commonwealth of Pennsylvania;²⁸ (ii) the June 30, 2005 Secretarial Letter granting Salsgiver Telecom provisional authority to provide telecommunications services as a CAP to the public in the Commonwealth of Pennsylvania;²⁹ and (iii) the CAP Tariff it filed with the PaPUC.³⁰ We find that the decisions of the PaPUC authorizing Salsgiver Telecom to “offer, render, furnish or supply telecommunications services”³¹ to the public as a CAP and permitting its Tariff to become effective, reflect judgments by an expert regulatory agency that the services set forth in Salsgiver’s proposed Tariff constitute “telecommunications services.”³² Moreover,

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WATS Market Structure, Phase I, Third Report and Order, 93 FCC 2d 241, 246-47, 249-50 ¶¶ 13-14, 23 (1983) (“*MTS/WATS Market Structure Order*”) (stating that access charges are regulated services and include “carrier’s carrier” services).

²⁶ 47 C.F.R. § 1.1409(b).

²⁷ *Id.*

²⁸ Salsgiver Telecom Sept. 5, 2006 Letter, Exhibit 2, Certificate of Public Convenience and March 27, 2006 Secretarial Letter. *See* Response, Exhibit 1, Salsgiver CAP Authorization Order.

²⁹ Complaint, Exhibit 1, June 30, 2005 Secretarial Letter at 1. *See* Response, Exhibit 1, Salsgiver CAP Authorization Order.

³⁰ Salsgiver Telecom Sept. 5, 2006 Letter, Exhibit 1, CAP Tariff. *See* Salsgiver Telecom Sept. 5, 2006 Letter, Exhibit 2, March 27, 2006 Secretarial Letter (permitting Salsgiver Telecom’s CAP Tariff to become effective on Feb. 14, 2006).

³¹ *See* Salsgiver Telecom Sept. 5, 2006 Letter, Exhibit 2.

³² *See* Salsgiver Telecom Sept. 5, 2006 Letter, Exhibit 2, March 27, 2006 Secretarial Letter (permitting Salsgiver Telecom’s CAP Tariff to become effective on Feb. 14, 2006) and Certificate of Public Convenience, issued March 27, 2006. Although Salsgiver Telecom had received only provisional authorization to operate as a CAP at the time it filed the Complaint, it obtained final authorization from the PaPUC a few weeks later, on March 27, 2006. *See supra* at n. 6. The provisional nature of its authorizations at the time of filing the Complaint does not change Salsgiver Telecom’s status as a “telecommunications carrier;” it merely indicates the defeasibility of such status had Salsgiver Telecom failed to comply with the PaPUC’s instructions to file revisions to its proposed CAP Tariff. *See* Letter Ruling dated August 29, 2006 from Barbara Esbin, Market Disputes Resolution Division, Enforcement

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NPTC has not identified any material differences between the meaning of the terms “telecommunications carrier” and “telecommunications service” under Pennsylvania law and the definitions of those terms in the Act; and we are aware of none.³³ Accordingly, Salsgiver Telecom may rely on the PaPUC’s authorization of its right to provide “telecommunications service” as a CAP, together with the PaPUC’s acceptance of Salsgiver Telecom’s Tariff, to establish its *prima facie* case under section 224(f)(1) of the Act.

11. In holding that Salsgiver Telecom has established a *prima facie* case that it is a “telecommunications carrier” with pole attachment rights under section 224(f) of the Act, our reliance on the PaPUC’s actions finds support in precedent addressing the prerequisites for the analogous process of establishing that an entity is a “cable television system” with pole attachment rights under section 224(f). In *Paragon Cable Television Inc. v. FCC*, the D.C. Circuit upheld a Commission ruling that possession of a valid cable franchise is a reasonable precondition for pole attachments. In so holding, the D.C. Circuit found that the Commission could apply a “presumption of validity” to decisions by the local franchising authority concerning the attacher’s status as an approved franchisee.³⁴ Similarly, in *Texas Util. Elec. Co v. FCC*, the D.C. Circuit upheld a Commission ruling that section 224 of the Act conferred jurisdiction over those pole attachments within the franchise service area defined by the local franchise authority.³⁵ These cases suggest that attachers are entitled to rely on decisions by responsible regulatory agencies, such as franchise authorities in the case of cable system attachers, and public utility commissions in the case of telecommunications carriers, in establishing their status as entities entitled to access under section 224(f) of the Act.³⁶

12. Based on the foregoing, we conclude that Salsgiver Telecom’s possession of a valid state authorization to provide telecommunications service as a CAP, together with its associated state tariff

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Bureau, to J.D. Thomas, Genevieve D. Sapir, and Ralph F. Manning, Counsel to Complainant, and Kenneth E. Hardman and John A. Alzamora, Counsel to Respondent, File No. EB-06-MD-002, at 2.

³³ We leave open the possibility that a state may define either “telecommunications carrier” or “telecommunications service” under state law in a manner so inconsistent with the definitions contained in sections 153(44) and 153(46) of the Act such that an entity could obtain state certification and file state tariffs, yet not meet those federal statutory definitions. Similarly, a state might authorize an entity to provide telecommunications services only in some, but not all, portions of a state such that additional evidence of the entity’s status would be required to demonstrate a right of attachment in those non-certificated portions of the state. Neither situation, however, exists in this case, as far as our record shows.

³⁴ *Paragon Cable Television Inc. v. FCC*, 822 F.2d 152, 153-54 (D.C. Cir. 1987) (holding that the Commission properly refused to address the attacher’s arguments challenging the legality of the franchise authority’s decision to revoke the attacher’s franchise, noting that it was appropriate for the Commission to employ a “presumption of validity with respect to the franchising authority’s actions *vis-à-vis* the franchise”). See *id.* at 154 & n.2 (citing *Telecommunications, Inc. v. South Carolina Elec. & Gas Co.*, File No. PA-83-0027 (Com. Car. Bur. Apr. 19, 1985) as holding that the utility could not substitute its judgment for the franchising authority by removing pole attachments before such time as the franchising authority’s revocation actually took effect).

³⁵ *Texas Util. Elec. Co v. FCC*, 997 F.2d 925, 934-35 (D.C. Cir. 1993).

³⁶ Moreover, NPTC does not argue that it lacks adequate recourse at the state level if it believes the PaPUC erred either in approving Salsgiver Telecom’s application to provide telecommunications services as a CAP, or in accepting Salsgiver’s CAP Tariff for filing. See generally, Response, Exhibit 1, Salsgiver CAP Authorization Order at 2 (“The Company complied with notice requirements set forth in our Application form. . . . No protests were filed. No hearings were held.”); 52 Pa. Code § 54.36 (procedure for protests to applications); 52 Pa. Code § 5.572 (procedures for petitions for relief following a final decision).

filing, constitutes presumptive evidence of its status as a “telecommunications carrier” within the meaning of the Act.³⁷ In our view, therefore, Salsgiver Telecom has made a *prima facie* showing that it is a “telecommunications carrier” entitled to nondiscriminatory access to NPTC’s poles under section 224(f)(1) of the Act.³⁸

B. NPTC Has Failed to Show That Its Denial of Access Was Lawful

13. Because Salsgiver Telecom has established a *prima facie* case, the burden shifts to NPTC to demonstrate that its denial of access was lawful.³⁹ NPTC argues that it lawfully denied access to Salsgiver Telecom because Salsgiver Telecom purportedly does not qualify as a “telecommunications carrier” with a right of attachment under section 224(f).⁴⁰ We have examined NPTC’s arguments and conclude, for the reasons set forth below, that NPTC has failed to show that Salsgiver Telecom is not a “telecommunications carrier” under the Act, and thus it cannot justify its denial of access on that basis.

1. Salsgiver’s Tariffed Private Line Services Are “Telecommunications Services” Under the Act

14. NPTC suggests that the dedicated (*i.e.*, private line) services that Salsgiver Telecom offers to business customers do not qualify as “telecommunications services made available to the public,” and therefore Salsgiver Telecom “may not be deemed a telecommunications carrier” with pole access rights under section 224.⁴¹ However, the Commission has long regulated as common carrier services the provision of “private line” services,⁴² which the Commission defines as “facilities or

³⁷ After it filed the instant Complaint, Salsgiver Telecom received authorization from the PaPUC to provide — in addition to CAP services — certain other telecommunications services. *See* Complainant’s Motion for Leave to File Notice and Notice, File No. EB-06-MD-002 (filed June 20, 2006); Complainant’s Erratum, File No. EB-06-MD-002 (filed June 30, 2006). We need not and do not rely on that authorization, however, because we have an adequate basis to resolve the instant Complaint, and do resolve it, on the basis of the PaPUC service authorization Salsgiver Telecom possessed at the time it filed the instant Complaint.

³⁸ Salsgiver Telecom also claims that it is entitled to pole access on the ground that it is a provider of *interstate* telecommunications services pursuant to (i) the Commission’s rules forbearing from requiring non-dominant interexchange and local exchange carriers to file tariffs, and (ii) the Commission’s blanket authorization for non-dominant carriers to enter interstate markets. Complaint at 3, ¶ 9; Reply of Salsgiver Telecom, Inc., File No. EB-06-MD-002 (filed Mar. 30, 2006) (“Reply”) at 9, 14-16. NPTC, however, challenges the adequacy of Salsgiver Telecom’s factual showing that it is a provider of interstate telecommunications services. Response at 13-14, ¶¶ 45-48, 49-55. Because we find that Salsgiver Telecom is entitled to access NPTC’s poles on the basis of its *intrastate* telecommunications service authorizations and service offerings, we need not and do not decide whether Salsgiver Telecom has submitted sufficient proof of its status as a provider of *interstate* telecommunications services.

³⁹ 47 C.F.R. § 1.1409(b).

⁴⁰ *See, e.g.*, Response at 6, ¶ 14; 7, ¶ 16; 12, ¶ 43; 13-15, ¶¶ 50-54, 57-58.

⁴¹ *See, e.g.*, Response at 14-15, ¶¶ 56-59.

⁴² *See, e.g.*, *Investigation of Special Access Tariffs of Local Exchange Carriers*, Memorandum Opinion and Order, 8 FCC Rcd 4712, 4712 at ¶ 2 (1993) (“*Special Access Tariff Investigation*”); *MTS and WATS Market Structure Order*, 93 FCC 2d at 249-50 at ¶¶ 20- 23; *American Telephone & Telegraph Company; Private Line Rate Structure and Volume Discount Practices*, Notice of Inquiry and Proposed Rulemaking, 74 FCC 2d 226 (1979) (investigating whether the pricing of AT&T’s competitive private line services was consistent with 47 U.S.C § 202, which prohibits unjust discrimination by common carriers).

network transmission capacity dedicated to the use of an individual customer.”⁴³ For example, the Commission’s rules contain general guidelines and rate structure requirements for the tariffed private line services of dominant common carriers.⁴⁴ Moreover, the Commission has recognized that interstate private line services can qualify as interstate telecommunications services for purposes of universal service contributions.⁴⁵ The Commission thus has recognized that private line services may be offered on a common carrier basis, and treats private line services offered under tariff as common carrier offerings. Accordingly, the fact that Salsgiver Telecom offers dedicated or “private line” services, standing alone, provides no basis for NPTC’s assertion that Salsgiver Telecom is not a “telecommunications carrier” with pole attachment rights under section 224(f)(1) of the Act.⁴⁶

15. Moreover, Salsgiver Telecom’s authorization to provide telecommunications services as a CAP on a statewide basis, together with its CAP Tariff, establish that Salsgiver Telecom is authorized to and does *offer to provide* its private line CAP services indiscriminately and indifferently to the public for a fee in NPTC’s territory. Indeed, the very term “tariff” means an offering to provide service.⁴⁷ And the text of Salsgiver Telecom’s CAP Tariff reflects that the services offered are “telecommunications.” For example, the CAP Tariff states that it applies to “intrastate services supplied to Customers for origination and termination of traffic . . .”⁴⁸ The services offered under the Tariff are described generally as: “wholesale competitive access services,” including “the furnishing of intrastate interLATA and

⁴³ *Special Access Tariff Investigation*, 8 FCC Rcd at 4712, ¶ 2.

⁴⁴ 47 C.F.R. § 61.40 (providing rate structure requirements for the tariffed private line services of dominant common carriers); *Access Charge Reform*, Fifth Report and Order, 14 FCC Rcd 14221 (1999) (establishing pricing flexibility rules for incumbent local exchange carrier (“ILEC”) special access – interstate private line – services, including circumstances in which ILECs may offer such services on an individually tailored “contract tariff” basis), *aff’d sub nom. WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001); *see Special Access Tariff Investigation*, *supra* (investigating certain issues related to duration of the Other Common Carrier (OCC) Rate Equalization Plan adopted in connection with replacing local private line services provisioned under tariff by AT&T prior to the advent of effective special access tariffs).

⁴⁵ *See Universal Service Order*, 12 FCC Rcd at 9175, ¶ 780; 9355-56 at Appendix I (stating that private line services qualify as “telecommunications” and adopting rules providing for universal service contributions by interstate telecommunications carriers); 47 C.F.R. § 54.706(a) (stating that entities that provide “interstate telecommunications” — including “private line service” — to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered “telecommunications carriers” providing interstate telecommunications services and must contribute to the universal service support mechanisms.).

⁴⁶ In its August 19, 2005 Letter explaining its reasons for denying Salsgiver Telecom access to its poles, NPTC cited Salsgiver Telecom’s lack of certification by the PaPUC as a “CLEC.” Complaint, Exhibit 6 at 1; Response at 7, ¶ 13; 10, ¶ 17. If NPTC is thereby contending that it may deny pole access to Salsgiver Telecom merely because it is certified as a “CAP” rather than as a “CLEC,” we reject that position. For the reasons described above, the “Competitive Access Provider” services listed in the CAP Tariff qualify as “telecommunications services” under the Act. Moreover, through its CAP Tariff, Salsgiver Telecom holds itself out to provide the listed telecommunications services indiscriminately to the public, for a fee. Thus, the fact that Salsgiver Telecom is a “CAP” rather than a “CLEC” provides no lawful basis under the Act for NPTC to deny Salsgiver access to NPTC’s poles.

⁴⁷ *See, e.g., Integrated Services Digital Networks*, First Report, 98 FCC2d 249, 278, n.77 (1984) (“A tariff for interstate service is a public offer to provide service . . .”); Harry Newton, Harry Newton, *Newton’s Telecom Dictionary* 888 (22nd ed. 2006) (defining “tariff” in relevant part as a “public document [that] details services, equipment and pricing *offered by* the telephone company (a common carrier) to all potential customers”) (emphasis added).

⁴⁸ *See* CAP Tariff, “Application of Tariff,” Page 4 of 28.

intraLATA ... services” involving “information transmission originating from nonresidential user points within ... Pennsylvania.”⁴⁹ The Tariff further specifies that “Transmission Service is offered via the Company’s facilities for the transmission of one-way and two-way communications.”⁵⁰ These terms demonstrate that Salsgiver Telecom is offering to provide to the public for a fee intrastate “telecommunications,” that is, “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”⁵¹

16. NPTC further suggests that its denial of pole access was lawful because Salsgiver Telecom will be offering broadband transmission capacity on “dark fiber.” According to NPTC, dark fiber offerings are not “telecommunications services,” and Salsgiver Telecom therefore has no right to attach to NPTC’s poles for the purpose of providing dark fiber.⁵² NPTC cites no evidence in the record, however, to support its claim that Salsgiver Telecom intends to provide “dark fiber” services in NPTC’s territory. Such proof would be unavailing, in any event, because Salsgiver Telecom has established that it is a “telecommunications carrier” based on its offering of “lit” services that indisputably qualify as “telecommunications services.” Thus, regardless of the status of dark fiber service under the Act – an issue we need not and do not address here – Salsgiver Telecom is entitled to access under section 224 based on its offering of “lit” services, and the addition of a dark fiber offering would have no impact on its pole attachment rights.⁵³

17. We also reject NPTC’s suggestion that Salsgiver Telecom does not qualify as a telecommunications carrier because its customers will provide and install their own terminal equipment under its CAP Tariff.⁵⁴ NPTC has not cited — and we are not aware of — any authority holding that an entity failed to qualify as a common carrier solely because its customers were required to provide and install their own terminal equipment (*i.e.*, customer premises equipment or “CPE”). In fact, contrary to NPTC’s position, the Commission’s rules expressly contemplate that telecommunications carriers *may* (but need not) *separately* provide transmission services that connect to customer-supplied CPE.⁵⁵

⁴⁹ CAP Tariff, “Service Offered,” Page 4 of 28.

⁵⁰ CAP Tariff, Sections 3 “Description of Service” at Section 3.1, Page 25 of 28. In addition, the Tariff specifies: “Digital channels over the Company’s network are furnished for full-duplex transmission of digital signals” *Id.* at Section 3.2, Page 25 of 28.

⁵¹ 47 U.S.C. § 153 (43), (46). To the extent that NPTC’s characterization of Salsgiver’s services as “broadband” services is intended to suggest that they are information services, we disagree with that suggestion for the reasons discussed above. *See* NPTC Nov. 23, 2005 Letter at 2; Response at 6, ¶ 14.

⁵² Response at 6, 14-15, ¶¶ 14, 56-59.

⁵³ *See National Cable & Telecommunications Ass’n, Inc. v. Gulf Power Co.*, 534 U.S. 327 (2002) (holding, in an analogous context, that the protections of section 224 continue to apply to attachments by cable systems, even if the attachments are simultaneously used to provide both cable service and a non-cable service, such as high-speed Internet access).

⁵⁴ Response at 6, 12, ¶¶ 14, 43-44. The Commission’s rules define “Terminal equipment” as: “[C]ommunications equipment located on the customer’s premises at the end of a communications link, used to permit the stations involved to accomplish the provision of telecommunications or information services.” 47 C.F.R. § 68.3.

⁵⁵ *See, e.g.*, 47 C.F.R. § 68.100 (“[T]erminal equipment may be directly connected to the public switched telephone network, *including private line services provided over wireline facilities that are owned by providers of wireline telecommunications.*”) (emphasis added); 47 C.F.R. 68.106(a) (“Customers connecting terminal equipment or protective circuitry to the public switched telephone network shall, upon request of the provider of wireline

(continued....)

Nothing in the Commission's rules or policies suggests that such providers of separate transmission services thereby lose their status as "telecommunications carriers." NPTC, therefore, may not lawfully deny Salsgiver Telecom access to its poles on the ground that it is not a "telecommunications carrier" because its customers are supplying their own CPE.

18. In sum, by offering to provide its dedicated (*i.e.*, private line) transmission service and point-to-point services via its CAP Tariff, Salsgiver Telecom is holding itself out to the public as providing those services indifferently and "indiscriminately" for a fee; moreover, those services involve communications by wire and transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. Thus, Salsgiver Telecom's tariffed private line services are clearly "telecommunications services" within the meaning of section 153(46) of the Act.⁵⁶ Based on this record, NPTC has failed to meet its burden of proving that Salsgiver Telecom does not qualify as a "telecommunications carrier" with pole access rights under section 224(f)(1) of the Act.

2. Intrastate Carriers Such as Salsgiver Telecom Have Pole Attachment Rights Under Section 224

19. NPTC argues that, because Salsgiver Telecom's authority to offer CAP services is limited to the provision of intrastate service, it is not a "telecommunications carrier" eligible for access to NPTC's poles under section 224(f)(1).⁵⁷ We conclude that, contrary to NPTC's assertions, section 224 provides pole attachment rights to intrastate carriers such as Salsgiver Telecom.

20. As previously described, section 224(f)(1) unambiguously states that "[a] utility shall provide a cable television system or *any* telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."⁵⁸ This reference to "any" telecommunications carrier contains no exclusion of intrastate carriers. The same is true of the statutory definitions of "telecommunications carrier," "telecommunications service," and "telecommunications."⁵⁹ Moreover, section 224(b) grants the Commission broad jurisdiction over pole attachment issues, except in states that certify that they regulate such issues pursuant to section 224(c); and Pennsylvania has not

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telecommunications, inform the provider of wireline telecommunications of the particular line(s) to which such connection is made, and any other information required to be placed on the terminal equipment ..."); 47 C.F.R. § 64.702(e) ("Except as otherwise ordered by the Commission, the carrier provision of customer premises equipment used in conjunction with the interstate telecommunications network *may* be offered in combination with the provision of common carrier communications services, except that the customer premises equipment shall not be offered on a tariffed basis.") (emphasis added). *See generally, Policy and Rules Concerning the Interstate, Interexchange Marketplace/Implementation of Section 254(g) of the Communications Act of 1934, As Amended/1998 Biennial Review - Review of the Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, Report and Order, 16 FCC Rcd 7418, 7428, 7437, ¶¶ 19, 32 (2001) (eliminating requirement that non-dominant carriers unbundle CPE from facilities and services).

⁵⁶ 47 U.S.C. § 153(46); *see id.* at § 153(44).

⁵⁷ Response at 13-14, ¶¶ 49-55.

⁵⁸ 47 U.S.C. § 224(f) (emphasis supplied).

⁵⁹ *See* 47 U.S.C. §§ 153(44), (46), (43).

so certified.⁶⁰ Further, section 2(b) of the Act explicitly recognizes the Commission's jurisdiction in connection with intrastate communication service "as provided in sections 223 through 227"⁶¹ In view of this plain statutory language, we conclude that Salsgiver Telecom's status as an intrastate carrier provides no basis for NPTC's assertion that Salsgiver Telecom is not a "telecommunications carrier" with pole access rights under section 224(f)(1) of the Act.⁶²

C. Salsgiver Telecom's Complaint Should Not be Dismissed as Untimely

21. NPTC contends that, under section 1.1404(m) of the Commission's pole attachment rules,⁶³ Salsgiver Telecom was required to file the Complaint within 30 days after NPTC's Nov. 23, 2005 Letter denying Salsgiver Telecom's pole attachment request, *i.e.*, by December 23, 2005.⁶⁴ Because Salsgiver Telecom did not file the Complaint until February 6, 2006, approximately six weeks later, NPTC argues that the Complaint should be dismissed as untimely. As explained below, we conclude that the 30-day time limit in section 1.1404(m) should be waived in this case, and thus we decline to dismiss the Complaint as untimely.

22. Although section 1.1404(m) provides that a complainant shall file a pole attachment complaint within 30 days of a denial of access, it does not expressly bar the filing of a complaint after the 30 day period has run,⁶⁵ and the Commission has discretion to waive the 30-day requirement in

⁶⁰ *Id.* at § 224(b) and (c); Complaint at 2, ¶ 6; Response at 2, ¶ 6. Public Notice, States That Have Certified That They Regulate Pole Attachments, 7 FCC Rcd 1498 (1992).

⁶¹ See 47 U.S.C. § 152(b).

⁶² In support of its assertion that section 224 affords no pole attachment rights to intrastate carriers, NPTC cites the definition of "common carrier" in section 153(10) of the Act, which provides, in part, that a "common carrier" or "carrier" means any person engaged as a common carrier for hire, in *interstate* or foreign communication by wire or radio 47 U.S.C. § 153(10)(emphasis supplied). See Response at 14, ¶ 51. We reject any implication that this definition of "common carrier" limits the reach of section 224 to "telecommunications carriers" who operate interstate. First, as stated above, the definition of "telecommunications carrier" (including the related definitions of "telecommunications service" and "telecommunications") contains no limitation to providers of interstate communications. 47 U.S.C. §§ 153(44),(46),(43). Moreover, such a restrictive interpretation of the term "telecommunications carrier" as used in section 224(f)(1) would eviscerate Congress' intent to open *local* telecommunications markets to competition through the 1996 Act and would undermine the Commission's policy of encouraging facilities-based competitive entry. See, e.g., *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 16983-84 at ¶¶ 1-3 (2003) ("*Triennial Review Order*"), corrected by *Triennial Review Order Errata*, 18 FCC Rcd 19020 (2003) (subsequent history omitted).

⁶³ See 47 U.S.C. § 1.1404 (m) (providing, in pertinent part: "[i]n a case where a cable television system operator or telecommunications carrier claims that it has been denied access to a pole, duct, conduit or right-of-way despite a request made pursuant to section 47 U.S.C. § 224(f), the complaint shall be filed within 30 days of such denial.>").

⁶⁴ See Response at 10, ¶ 19; NPTC Nov. 23, 2005 Letter.

⁶⁵ See *Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, 6788-89, ¶ 19 (1998) (rejecting pole owners' proposal to impose a statute of limitations on pole attachment complaints) (subsequent history omitted).

appropriate cases.⁶⁶ This is such a case. The record reveals that, within 30 days after NPTC's Nov. 23, 2005 denial of its pole access request, Salsgiver Telecom contacted Commission staff to seek informal assistance in reaching a negotiated resolution of the dispute.⁶⁷ This effort, although ultimately unsuccessful, was in keeping with the Commission's policy of encouraging parties to pursue such informal dispute resolution efforts before filing a formal complaint.⁶⁸ Further, NPTC does not allege that it has suffered any prejudice from Salsgiver Telecom filing in February 2006 rather than December 2005;⁶⁹ nor do we see how NPTC could have been prejudiced, because Salsgiver Telecom's pre-complaint correspondence advised NPTC of the very claims later asserted in the Complaint.⁷⁰ Under these circumstances, we find that a short waiver of the 30-day time limit in section 1.1404(m) of our rules is warranted in the interest of encouraging parties to consider alternatives to formal complaint proceedings. We thus decline to dismiss the Complaint as untimely.

D. Salsgiver Telecom Is Not Entitled to Extraordinary Relief

23. Salsgiver Telecom argues that we should award "extraordinary relief" in the form of unspecified penalties and sanctions, because NPTC allegedly is "systematically attempting to preclude entry of facilities-based telecommunications competitors in its service area" by denying access to its poles.⁷¹ Salsgiver Telecom charges that this systematic effort is evidenced by recent denial of access

⁶⁶ See 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.").

⁶⁷ Reply at 19-20; Reply, Declaration of Loren Salsgiver, Chief Executive Officer of Salsgiver Telecom, at 2, ¶¶ 3, 4.

⁶⁸ See, e.g., *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers*, Order on Reconsideration, 16 FCC Rcd 5681, 5697, ¶ 37 (2001) (noting, in the context of formal complaints filed under section 208 of the Act, that staff-supervised pre-complaint mediation is "highly recommend[ed]," because the "presence of Commission staff in mediation and settlement talks has facilitated the achievement of mutually agreeable solutions to disputes."); *Kansas City Cable Partners v. Kansas City Power & Light Co.*, Order, 14 FCC Rcd 11599, 11602 at ¶ 6 (Cab. Serv. Bur. 1999) ("Private negotiation is the preferred method for creating pole attachment arrangements and for dispute resolution.") (footnotes omitted).

⁶⁹ Response at 11-12, ¶¶ 36-41. Indeed, it appears that section 1.1404(m) was promulgated to protect the interest of *pole attachers* in speedy resolution of pole access disputes. See *Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777 at 6788, ¶ 18 (noting the interest of *cable operators* in the swift resolution of pole access disputes). It would thus be incongruous to penalize an attacher for promptly seeking alternative dispute resolution before filing a formal complaint.

⁷⁰ We further note that, although NPTC's initial denial of Salsgiver Telecom's written request for pole access occurred on November 23, 2005, NPTC has continued to deny Salsgiver Telecom access to its poles. See Supplemental Response of NPTC Regarding Salsgiver Telecom Response to Letter Ruling Dated Aug. 29, 2006, File No. EB-06-MD-002 (filed Sept. 14, 2006) at 1-3. Dismissal of the instant Complaint based on an alleged failure to comply with section 1.1404(m) would only serve to delay the resolution of this dispute, because Salsgiver Telecom would be free to submit another request for access to NPTC, and to file a new complaint, once NPTC responded with another denial of access. Such a scenario would result in a waste of resources for both the parties and the Commission.

⁷¹ Complaint at 8-9, ¶¶ 29-30 (citing 47 U.S.C. §§ 501, 503(a) and (b); 47 C.F.R. §§ 1.1413, 1.80); see *id.* at 10-11, ¶ 34. Salsgiver Telecom also asserted a request for damages, citing §§ 206-209 of the Act, 47 U.S.C. §§ 206-209. Complaint at 8-9, ¶ 29. It did not, however, offer proof of any alleged damages, nor did it comply with the Commission's rules for bringing complaints for damages under sections 206-208 of the Act. See 47 C.F.R. §§ 1.720

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complaints against NPTC filed by two other telecommunications carriers in NPTC's territory, and by Salsgiver Telecom's cable operator affiliate, Salsgiver Communications.⁷²

24. Even if penalties and sanctions could be awarded in a complaint proceeding (an issue we do not reach here), Salsgiver Telecom has failed to show that extraordinary relief in the form of penalties or sanctions is warranted. In particular, Salsgiver Telecom has not shown that the arguments NPTC has made in this and the other cases Salsgiver Telecom cites are so devoid of merit as to be frivolous. However, now that we have provided explicit guidance on the showing a telecommunications carrier is required to make regarding its status as a "telecommunications carrier" when requesting pole access under section 224, we expect NPTC to comply fully and expeditiously with its statutory obligation to afford pole access to entities that make such a showing.⁷³

IV. CONCLUSION

25. For the reasons stated above, we find that (i) Salsgiver Telecom has carried its burden to establish a *prima facie* case demonstrating its entitlement to attach to poles, ducts, conduits, and rights-of-way owned or controlled by NPTC; and (ii) NPTC has failed to carry its burden to establish that its denial of access was lawful on the alleged ground that Salsgiver Telecom is not a "telecommunications carrier" providing "telecommunications services," as those terms are defined in the Act. We therefore also conclude that Salsgiver Telecom is a "telecommunications carrier" entitled to pole attachments under section 224(f) of the Act, and grant the relief requested in the Complaint insofar as it requests an order requiring that NPTC promptly negotiate in good faith nondiscriminatory rates, terms, and conditions of access and attachments and take all actions reasonably necessary to accommodate Salsgiver Telecom's access to its poles, as set forth herein.

V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 224, and sections 1.1401-1.1418 of the Commission's rules, 47 C.F.R. §§ 1.1401-1.1418, that the Complaint IS GRANTED to the extent set forth herein, and is in all other respects DENIED.

27. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 224, and sections 1.1401-1.1418 of the Commission's Rules, 47 C.F.R. §§ 1.1401-1.1418, that, to the extent that Salsgiver Telecom continues to seek access to NPTC's facilities, Salsgiver Telecom and NPTC SHALL PROMPTLY NEGOTIATE IN GOOD FAITH nondiscriminatory terms and conditions of access and

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– 1.736. As a result of these deficiencies, we are unable to assess the merits of Salsgiver Telecom's request for damages and therefore deny it.

⁷² Complaint at 7-9, ¶¶ 24-30. See *Fiber Technologies Networks, L.L.C. v. North Pittsburgh Tel. Co.*, File No. EB-05-MD-014 (Complaint filed July 8, 2005); *DQE Communications Network Servs. v. North Pittsburgh Tel. Co.*, File No. EB-05-MD-027 (Complaint filed Sept. 16, 2005); *Salsgiver Communications, Inc. v. North Pittsburgh Tel. Co.*, File No. EB-06-MD-004 (Complaint filed Mar. 20, 2006).

⁷³ See *DQE Communications Network Servs. v. North Pittsburgh Tel. Co.*, Memorandum Opinion and Order, 22 FCC Rcd 2112 (Enf. Bur. 2007); *Fiber Technologies Networks, L.L.C. v. North Pittsburgh Tel. Co.*, Memorandum Opinion and Order, 2007 W.L. 580768 (Enf. Bur. 2007).

maximum just and reasonable rates for pole attachments in accordance with 47 U.S.C. § 224 and the Commission's rules.

28. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 224, and sections 1.1401-1.1418 of the Commission's Rules, 47 C.F.R. §§ 1.1401-1.1418, that, to the extent that Salsgiver Telecom continues to seek access to NPTC's facilities, NPTC SHALL: (i) immediately commence survey and engineering work on the poles in NPTC's service area to which Salsgiver Telecom seeks to attach; (ii) grant access to NPTC's poles without a formal agreement in the event NPTC fails to complete a just and reasonable pole attachment agreement within 60 days from the date of this Order; and (iii) commence accepting and processing pole attachment applications and conducting any necessary engineering or make-ready arrangements no later than 15 days from the date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau